

APPEAL NO. 030588
FILED APRIL 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 4, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed without good cause to timely notify the employer of an injury pursuant to Section 409.001; and that the carrier did not waive its right to contest compensability of the claimed injury because the carrier timely contested the claimant's claimed injury in accordance with Sections 409.021 and 409.022. The claimant appealed the hearing officer's determinations that he did not sustain a compensable injury, that he has not had disability, and that the carrier did not waive its right to contest compensability of the claimed injury. The carrier responded. There is no appeal of the hearing officer's determination on the issue of timely notice to the employer.

DECISION

Affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issue of whether the claimant sustained a compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

Conflicting evidence was also presented on the waiver issue. The hearing officer found that the carrier first received written notice of the claimed injury on June 6, 2002, and that the carrier contested compensability of the claimed injury on June 12, 2002, which was within seven days, and the hearing officer concluded that the carrier did not waive its right to contest compensability because it timely contested the claimed injury in accordance with Sections 409.021 and 409.022. See Continental Casualty Company v. Downs, 81 S.W.2d 803 (Tex. 2002). We conclude that the hearing officer's findings and conclusion on the waiver issue are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **VALLEY FORGE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge